

Introduced by Senator Soto

February 10, 2005

An act to amend Section 13304 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 187, as introduced, Soto. Cleanup and abatement orders.

Existing law, the Porter-Cologne Water Quality Control Act, authorizes the State Water Resources Control Board or a California regional water quality control board to include in a cleanup and abatement order the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner.

This bill would require the state board or a regional board, as applicable, to include in a cleanup and abatement order the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13304 of the Water Code is amended to
2 read:
3 13304. (a) Any person who has discharged or discharges
4 waste into the waters of this state in violation of any waste
5 discharge requirement or other order or prohibition issued by a
6 regional board or the state board, or who has caused or permitted,
7 causes or permits, or threatens to cause or permit any waste to be
8 discharged or deposited where it is, or probably will be,

1 discharged into the waters of the state and creates, or threatens to
2 create, a condition of pollution or nuisance, shall upon order of
3 the regional board, clean up the waste or abate the effects of the
4 waste, or, in the case of threatened pollution or nuisance, take
5 other necessary remedial action, including, but not limited to,
6 overseeing cleanup and abatement efforts. A cleanup and
7 abatement order issued by the state board or a regional board
8 ~~may~~ *shall* require the provision of, or payment for, uninterrupted
9 replacement water service, which may include wellhead
10 treatment, to each affected public water supplier or private well
11 owner. Upon failure of any person to comply with the cleanup or
12 abatement order, the Attorney General, at the request of the
13 board, shall petition the superior court for that county for the
14 issuance of an injunction requiring the person to comply with the
15 order. In the suit, the court shall have jurisdiction to grant a
16 prohibitory or mandatory injunction, either preliminary or
17 permanent, as the facts may warrant.

18 (b) (1) The regional board may expend available money to
19 perform any cleanup, abatement, or remedial work required
20 under the circumstances set forth in subdivision (a), including,
21 but not limited to, supervision of cleanup and abatement
22 activities that, in its judgment, is required by the magnitude of
23 the endeavor or the urgency for prompt action to prevent
24 substantial pollution, nuisance, or injury to any waters of the
25 state. The action may be taken in default of, or in addition to,
26 remedial work by the waste discharger or other persons, and
27 regardless of whether injunctive relief is being sought.

28 (2) The regional board may perform the work itself, or with
29 the cooperation of any other governmental agency, and may use
30 rented tools or equipment, either with operators furnished or
31 unoperated. Notwithstanding any other provisions of law, the
32 regional board may enter into oral contracts for the work, and the
33 contracts, whether written or oral, may include provisions for
34 equipment rental and in addition the furnishing of labor and
35 materials necessary to accomplish the work. The contracts are
36 not subject to approval by the Department of General Services.

37 (3) The regional board shall be permitted reasonable access to
38 the affected property as necessary to perform any cleanup,
39 abatement, or other remedial work. The access shall be obtained
40 with the consent of the owner or possessor of the property or, if

the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(4) The regional board may contract with a water agency to perform, under the direction of the regional board, investigations of existing or threatened groundwater pollution or nuisance. The agency's cost of performing the contracted services shall be reimbursed by the regional board from the first available funds obtained from cost recovery actions for the specific site. The authority of a regional board to contract with a water agency is limited to a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin.

(c) (1) If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(2) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, that identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for

1 10 years from the time of the recording of the notice, unless
2 sooner released or otherwise discharged. Not later than 45 days
3 after receiving a notice of lien, the owner may petition the court
4 for an order releasing the property from the lien or reducing the
5 amount of the lien. In this court action, the governmental agency
6 that incurred the cleanup costs shall establish that the costs were
7 reasonable and necessary. The lien may be foreclosed by an
8 action brought by the state board on behalf of the regional board
9 for a money judgment. Money recovered by a judgment in favor
10 of the state board shall be deposited in the State Water Pollution
11 Cleanup and Abatement Account.

12 (d) If, despite reasonable effort by the regional board to
13 identify the person responsible for the discharge of waste or the
14 condition of pollution or nuisance, the person is not identified at
15 the time cleanup, abatement, or remedial work is required to be
16 performed, the regional board is not required to issue an order
17 under this section.

18 (e) “Threaten,” for purposes of this section, means a condition
19 creating a substantial probability of harm, when the probability
20 and potential extent of harm make it reasonably necessary to take
21 immediate action to prevent, reduce, or mitigate damages to
22 persons, property, or natural resources.

23 (f) Replacement water provided pursuant to subdivision (a)
24 shall meet all applicable federal, state, and local drinking water
25 standards, and shall have comparable quality to that pumped by
26 the public water system or private well owner prior to the
27 discharge of waste.

28 (g) (1) Any public water supplier or private well owner
29 receiving replacement water by reason of an order issued
30 pursuant to subdivision (a), or any person or entity who is
31 ordered to provide replacement water pursuant to subdivision (a),
32 may request nonbinding mediation of all replacement water
33 claims.

34 (2) If so requested, the public water suppliers receiving the
35 replacement water and the persons or entities ordered to provide
36 the replacement water, within 30 days of the submittal of a water
37 replacement plan, shall engage in at least one confidential
38 settlement discussion before a mutually acceptable mediator.

39 (3) Any agreement between parties regarding replacement
40 water claims resulting from participation in the nonbinding

1 mediation process shall be consistent with the requirements of
2 any cleanup and abatement order.

3 (4) A regional board or the state board is not required to
4 participate in any nonbinding mediation requested pursuant to
5 paragraph (1).

6 (5) The party or parties requesting the mediation shall pay for
7 the costs of the mediation.

8 (h) As part of any cleanup and abatement order that requires
9 the provision of replacement water, a regional board or the state
10 board shall request a water replacement plan from the discharger
11 in cases where replacement water is to be provided for more than
12 30 days. The water replacement plan is subject to the approval of
13 the regional board or the state board prior to its implementation.

14 (i) A “water replacement plan” means a plan pursuant to
15 which the discharger will provide replacement water in
16 accordance with a cleanup and abatement order.

17 (j) This section does not impose any new liability for acts
18 occurring before January 1, 1981, if the acts were not in violation
19 of existing laws or regulations at the time they occurred.

20 (k) Nothing in this section limits the authority of any state
21 agency under any other law or regulation to enforce or administer
22 any cleanup or abatement activity.

23 (l) The Legislature declares that the amendments made to
24 subdivision (a) of this section by Senate Bill 1004 of the 2003–04
25 Regular Session do not constitute a change in, but are declaratory
26 of, existing law.